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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CARL P. SCHEIDEGG,

Petitioner

versus

SHIRLEY FERGUSON,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW HAMPSHIRE

PETITION FOR WRIT OF CERTIORARI

Carl P. Scheidegg
Pro Se
48 Heather Court
Nashua, NH 03062
(603) 886-0080

June 25, 1990

QUESTIONS PRESENTED

1. Whether Rule 25(1)(b), N. H. Supreme Court Rules Annotated, is invalid for repugnance to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, as applied to Petitioner in the State appeal in this case, wherein he raised questions as to the sufficiency of the evidence adduced at trial to support the grounds of divorce and custody and visitation orders, the property distribution, and the child support level actually decreed by the Superior Court, and the New Hampshire Supreme Court "summarily affirmed" on the merits with respect to these issues without any review of the transcript or other record of the proceedings

below, and this was Petitioner's only appeal allowed as of right under State law.

2. Whether New Hampshire Revised Statutes Annotated, Chapter 458-C, is invalid for repugnance to the Due Process and/or Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, as applied to Petitioner in his State divorce case, because it arbitrarily, capriciously, unfairly, and/or unreasonably mandates a fixed percentage of the non-custodial parent's adjusted gross income for "child support" regardless of the actual needs of the child or the child's accustomed level of support, regardless of the ability of the obligor to pay the fixed amount in his particular circumstances, and without allowing

deductions for the obligor's necessary living expenses, his costs of doing business, or the actual costs of his generating his particular income.

3. Whether Petitioner was denied his due process right to hearing before a court of competent jurisdiction by having the merits of his divorce, including substantial liberty and property interests, determined by a mere attorney "master" who was not a judicial officer nor possessed of authority to decide issues before the judicial branch according to New Hampshire law, where no judicial officer would hear or review disputed issues de novo or even review any record of trial proceedings before the master despite requests therefore by Petitioner.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Carl P. Scheidegg, Pro Se, respectfully prays that a writ of certiorari issue to review the judgment of the New Hampshire Supreme Court entered in the above-entitled cause on January 15, 1990. This Order is reproduced in the Appendix to this Petition, submitted separately,

at pages 1-2. [App. 1-2.]

OPINION BELOW

The one-page Order of the New Hampshire Supreme Court challenged herein was issued on January 15, 1990 as a "summary affirmance" without opinion, and without any review of the record as to the Federal claims raised in this Petition. The State court acted "in accordance with [N.H. Supreme Court] Rule 25(1)(b)" without any hearing. Order, App. 1. N. H. Supreme Court Rule 25(1) is reproduced at App. 41.

Petitioner timely moved for reconsideration in the State high court, citing the constitutional violation of determining sufficiency of the evidence respecting the questions "summarily" disposed of without any review of the evidence. See, Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987)(due process forbids such determinations under

N.H.S.Ct. Rule 25(1) when substantial liberty interests are at stake).

The Supreme Court of New Hampshire denied the motion for reconsideration without hearing or opinion in a one-page order dated February 27, 1990. See, App. 3.

Neither Order was published in any form. The unpublished N. H. Superior Court orders are reproduced at App. 4-40.

JURISDICTION

Upon the timely application of Petitioner, Justice Brennan extended the time for filing this Petition "to and including June 27, 1990." See, Order of this Court dated May 29, 1990.

This Petition is timely filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1257(3) and 2101(c), and Rules 13.1, 13.2, and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS

This Petition involves claims arising under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, which prohibit deprivations of liberty or property without due process of law and the equal protection of the laws.

STATUTORY AND RULE PROVISIONS

The pertinent portion of Rule 25(1), N. H. Supreme Court Rules governing "Summary Disposition" is reproduced at App. 41. It is challenged on due process.

The full text of N.H. Revised Statutes Annotated [RSA] Chapter 458-C ("Child Support Guidelines") is set forth at App. 42-44. This Chapter offends both the Due Process and Equal Protection Clauses, and was challenged below on those grounds.

STATEMENT OF THE CASE

The basic facts and procedural history of this case, necessary for a determinantion of the questions presented in this Petition, are not in dispute.

That Petitioner timely and properly raised these Federal claims at every stage of the proceedings below cannot be legitimately contested.

Respondent wife [now] Shirley Ferguson filed for divorce in the Hillsborough County (Manchester, New Hampshire) sitting of the New Hampshire Superior Court, on December 26, 1986, case number 86-M-2103.

Numerous issues arose in the trial court as to custody of and visitation with the parties' two minor children, and with respect to division of the parties' marital estate and as to the proper level of child support to be paid by Petitioner, Carl P. Scheidegg, a career officer on full-time

active military duty with the United States Air Force as a Lieutenant Colonel.

The pertinent orders and decrees of the Superior Court disposing of these issues are set out verbatim in chronological order at App. 4-40. All of these orders were written, and all evidence in the case was heard, by a mere attorney, sitting as a non-judicial master under current State practice.

Petitioner timely and repeatedly demanded hearing, or rehearing de novo on disputed issues by a regular justice of the New Hampshire Superior Court, duly commissioned under State law as a judicial officer and exclusively empowered to determine issues before the judicial branch. His numerous motions in this regard were denied without hearing in the Superior Court, and not heard by the Supreme Court of New Hampshire. See, Orders of N.H. Supreme Court, App. 1-3, in

N.H.S.Ct. case no. 89-364.

Among the issues raised by Petitioner in his State Notice of Appeal in No. 89-364 was the unconstitutionality of the "marital master" system in New Hampshire matrimonial cases, where the litigants never see judge or jury, yet have their lives completely altered by a mere attorney sitting as a judge-for-a-day, and the invalidity under the Fourteenth Amendment of N.H. RSA 458-C ("Child Support Guidelines") which automatically and mechanically tax gross income for child support, with no consideration of the actual needs of the child, his accustomed level of support, or the ability of the obligor to pay in his particular circumstances and without allowing deductions for costs of generating the very income to be levied against.

When the New Hampshire Supreme Court summarily affirmed the decree on the questions here at issue, App. 1, overruling

Petitioner's sufficiency of the evidence challenges thereto, Petitioner timely filed a motion for reconsideration raising the Fourteenth Amendment due process concerns ennunciated in Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987)(N.H. Supreme Court may not apply its Rule 25(1) so as to deprive litigants of due process of law and fair access to available State appellate review). This motion was denied without hearing or opinion. App. 3.

The only hearing Petitioner was ever afforded in the State courts on the matters at issue herein was before a marital master who was as a matter of state law not a judicial officer, and was, rather, merely a private attorney sitting "[e]ffectively ...[as] a de facto judge." Cornforth v. Cornforth, 123 N.H. 61, 63, 455 A.2d 1049 (1983)(opinion of Charles Douglas, Assoc. Justice).

This constitutional grievance—lack

of any hearing before any court of competent jurisdiction—was ignored by both the Superior and Supreme Courts of New Hampshire. The trial courts are so backlogged with a virtual explosion of litigation that were a justice to be assigned to hear or even review the transcriptural record of divorce cases, virtually no other business could be conducted in the courts. This explains, but does not justify, the jurisdictional and hence due process defects in the State "master" system which allows complete determination of cases by non-judges with no judicial review of any kind in either the Superior or Supreme Courts, contrary to the hearing requirement of the Fourteenth Amendment.

The Superior Court even refused—and routinely so refuses—timely motions for production of the transcriptural record of proceedings before the master—

so disputed matters might be reviewed by a justice de novo. And the New Hampshire Supreme Court denied Petitioner's request for requisition of the transcript of trial proceedings for review by the Supreme Court in connection with the notice of appeal in No. 89-364.

This practice is not unique to this case, but is the routine in the New Hampshire courts in the current deluge of cases there pending.

REASONS FOR ALLOWANCE OF THE WRIT

Unless this Court takes action to correct the constitutional infirmities in the New Hampshire State courts complained of herein, more of its citizens will be deprived of fundamental liberties protected by the Fourteenth Amendment to the Great Charter. Moreover, the New Hampshire response to ever-increasing litigation

may be adopted by other States unless this Court disapproves same, or provides proper guidelines for the States to follow in the areas addressed below.

It is obvious that the New Hampshire Supreme Court has decided important questions of Federal law which have not been, but should be, settled by this Court, and that the State court has decided Federal questions in a way that conflicts with applicable decisions of this Court and of the United States Court of Appeals for the First Circuit in cases addressing the very State practices complained of herein. Rule 10.1(b) & (c), Rules of the Supreme Court of the United States (eff. Jan. 1, 1990).

I. THE DECISION OF THE SUPREME COURT OF NEW HAMPSHIRE TO SUMMARILY AFFIRM PETITIONER'S QUESTIONS IMPLICATING SUFFICIENCY OF THE EVIDENCE, IN HIS ONLY APPEAL ALLOWED AS OF RIGHT UNDER STATE LAW, WITHOUT ANY REVIEW OF THE TRIAL RECORD, CONFLICTED WITH THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT IN BUNDY v. WILSON, 815 F.2d 125 (1st Cir. 1987) AND CASES OF THIS COURT COLLECTED THEREIN, AND OFFENDED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHERE SUBSTANTIAL LIBERTY AND PROPERTY INTERESTS WERE AT STAKE.

Petitioner had appealed to the New Hampshire Supreme Court that the evidence adduced at trial was insufficient as a matter of law to support the objected to portions of the divorce decree in this case. The State high court summarily affirmed the decision below with respect to these disputed issues in accordance with Rule 25(1)(b), N.H. Supreme Court Rules Annotated, which allows such a disposition, even where, as here, the trial record was not requisitioned by the State Supreme Court nor

reviewed in any fashion by it.

The United States Court of Appeals for the First Circuit ruled in Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987) that where substantial liberty interests were at stake, as in felony appeals, the New Hampshire Supreme Court could not enforce its Rule 25 in such a manner as to determine sufficiency of the evidence questions without some review of the evidence at trial. Id., at 129 n. 2, 133, 135. And transcripts are necessary for litigants to have that minimum mandated by the Due Process Clause, "an adequate opportunity to present [their] claims fairly in the context of a State's appellate process." Id., at 130, 131, quoting Ake v. Oklahoma, 470 U.S. 68, 77 (1985), Ross v. Moffit, 417 U.S. 600, 612 (1974)(same), and Evitts v. Lucey, 469 U.S. 387, 402 (1985) (same).

Your Petitioner submits that in the circumstances of this case, he was entitled to the same due process of law as the felony appellants in Bundy. In this case, substantial interests in custody and visitation with Petitioner's minor children were implicated in the divorce case, the very grounds of divorce were at issue, along with substantial property interests in the form of tens of thousands of dollars or marital assets and court-ordered child support payments. It is beyond dispute that the Due Process Clause of the Fourteenth Amendment protects both "liberty" and "property" in the form of substantial amounts of money. Board of Regents v. Roth, 408 U.S. 564 (1972).

The First Circuit in Bundy v. Wilson, supra, 815 F.2d, at 131, after analyzing the "three distinct factors that must be considered when evaluating a claim of due

process deprivation" announced by this Court in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), concluded that what process was due litigants in the New Hampshire Supreme Court included some actual review of a trial record before summary disposition could be made of questions implicating sufficiency of the evidence at trial. Bundy v. Wilson, supra, 815 F.2d, at 133. The First Circuit reasoned that appellants are entitled to "a 'record of sufficient completeness' to permit proper consideration of their claims," quoting from Draper v. Washington, 372 U.S. 487, 499 (1963). The Court of Appeals went on to declare that

> Due process thus prohibits the New Hampshire Supreme Court from arbitrarily and capriciously deciding to decline to consider Bundy's sufficiency of the evidence claim. The state supreme court must necessarily make at least a rough assessment that the evidence is sufficient in order for its decision to accord with due process. We think it impossible for a reviewing court to make even a rough assessment of the

> sufficiency of the evidence without some reference to the trial court record. The accuracy of this rough assessment is especially important in New Hampshire for it will most likely determine the "desireability" of accepting the appeal

on the merits, or of "summarily" disposing of it under Rule 25(1). Bundy v. Wilson, supra, 815 F.2d, at 133.

Although there is no constitutional right to an appeal in the first place, the Court of Appeals shared the opinion of this Court that "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." Bundy, at 129, quoting from Evitts v. Lucey, 469 U.S. 387, 401 (1985). Because it is "access to the record which makes appellate review meaningful," Bundy, at 130, quoting

Gardner v. California, 393 U.S. 367, 368 (1969), "appellants [are entitled to] seek to guard their interest in an accurate disposition of their appeals by obtaining procedural protections that will provide them with a full and fair opportunity to present their cases for review, and thus ensure the proper functioning of the adversary system," Bundy v. Wilson, supra, 815 F.2d, at 131, citing Gardner v. California, supra, 393 U.S., at 369.

The First Circuit's holding was squarely on due process grounds, emphasizing that an appeal to the New Hampshire Supreme Court is a litigant's one and only chance for review in New Hampshire, there being no intermediate court of appeals in the State system. Bundy, supra, 815 F. 2d, at 130.

Your Petitioner's appeal to the New Hampshire Supreme Court was indeed his

only available judicial review of a trial master's determination of his divorce case. In fact, Petitioner was at even greater disadvatange than the criminal appellants in Bundy because unlike them, Petitioner had no right of automatic review of federal claims on writ of habeas corpus in the United States District Court under 28 U.S.C. § 2241 et seq. Cf., Bundy, at 132 n.4 ("the federal district court in New Hampshire has, to some degree, been transformed into a state appellate court as a result of the state supreme court's utilization of the declination of acceptance procedure [under Rule 25(1)]. A federal district court entertaining a habeas petition... normally orders the production of a transcript of petitioner's trial, if one is not already available. Thus, New Hampshire state prisoners are apt to receive a fuller opportunity to present their claims

for review via a [federal] habeas petition than through the state appeal process.... [T]his...places a burden on the federal government" that is in no other State imposed on it); Bundy, at 136-142 (Appendix summary of the right of appeal in the several states, the District of Columbia, and the Commonwealth of Puerto Rico; New Hampshire unique in having only one appellate court and declining appeals or summarily affirming without reviewing any record).

Your Petitioner respectfully submits that due process required that the New Hampshire Supreme Court not summarily affirm the merits of the challenged portions of his divorce decree without some review of the record evidence to support it. Id., at 133.

This obvious deprivation of a right secured by the Fourteenth Amendment is a special and important reason to grant the writ.

II. THE NEW HAMPSHIRE CHILD SUPPORT GUIDELINES ARE UNCONSTITUTIONAL AS APPLIED TO PETITIONER IN HIS STATE DIVORCE CASE BECAUSE THEY ARBITRARILY, CAPRICIOUSLY, UNFAIRLY, AND UNREASONABLY MANDATE A FIXED PERCENTANGE OF THE NON-CUSTODIAL PARENT'S ADJUSTED GROSS INCOME FOR "CHILD SUPPORT" REGARDLESS OF THE ACTUAL NEEDS OF THE CHILD OR THE CHILD'S ACCUSTOMED LEVEL OF SUPPORT, REGARDLESS OF THE ABILITY OF THE OBLIGOR TO PAY THE FIXED AMOUNT IN HIS PARTICULAR CIRCUMSTANCES, AND WITHOUT ALLOWING DEDUCTIONS FOR THE OBLIGOR'S NECESSARY LIVING EXPENSES, HIS COSTS OF DOING BUSINESS, OR THE ACTUAL COSTS OF HIS GENERATING HIS PARTICULAR INCOME.

The text of the New Hampshire Child Support Guideline, N.H. Revised Statutes Annotated [RSA] Chapter 458-C, is set out in full at App. 42-44.

It cannot be disputed that under this "Guideline" the trial courts of New Hampshire almost invariably assign a fixed percentage of the obligor's—usually the father's—adjusted gross income as "child

support," whether or not this amount exceeeds the actual needs of the child or the child's historical level of support when the parents were living together, and regardless of whether the non-custodual, "obligor" parent can in fact afford to pay this amount in view of his individual financial circumstances.

This guideline was applied to your Petitioner in a routine, mechanical fashion, despite all of his complaints to the Superior Court and Supreme Court that to do so in his case was arbitrary, capricious, unreasonable, and unfair as a matter of Fourteenth Amendment due process of law and equal protection.

The myopic insistence of the New Hampshire courts to impose this confiscatory guideline in the heavy-handed manner here at issue abridged Petitioner's fundamental right not to be deprived of

property without due process of law, guaranteed to him by the Constitution of the United States. Board of Regents v. Roth, 408 U.S. 564 (1972)(Due Process Clause clearly protects substantial, i.e, not de minimus "property interests").

The tens of thousands of dollars of excess child support, above any demonstrated need of Petitioner's children, cannot fairly be termed "de minimis" in this case.

If the State courts wish to convey large sums of money to ex-spouses, usually the mothers, they can of course do so by providing for reasonable alimony or spousal support or maintainance awards. But to fix an arbitrarily high percentage of basically gross income of the non-custodial parent as the bench mark for "child support," is perforce unreasonable qua child support because such large amounts

cannot logically be termed "child support" where as here the children simply do not need and never have received such expensive "support." "Child support" is not deductible.

Your Petitioner documented his special expenses associated with travel to and from his highly technical job with the United States Air Force, and his need to keep up on training and education in his professional field, as necessary pre-requisites to earning the very income the State court desired to tax for "child support." Petitioner showed that his true net income, after deduction of these necessary and reasonable expenses, did not support the excessive child support awards actually mandated by RSA 458-C and in fact imposed in his case. But the trial court blindly applied the "Guideline" to arrive at the confiscatory child support award challenged here, rather than award alimony which would have been deductible to Petitioner for IRS purposes at least.

The New Hampshire Guideline was indeed mandated by Congress. See generally, Fitzgerald v. Fitzgerald, 566 A.2d 719, 722 (D.C.App. Oct. 13, 1989). However, the intent of Congress was to "establish[] realistic support obligations," id, at 725, not the arbitrary and capricious rules here disputed. Id, 724-725 ("non-custodial parents might be inclined to disregard [] support order[s which seemed] unreasonable" or "arbitrar[y]").

While ruling on narrower procedural grounds to invalidate the District of Columbia Child Support Guidelines, the Court of Appeals clearly opined that "there is a substantive [due process] right to a child support determination based upon the needs of the child and the parent's ability to pay, determined in light of the parent's available net income," Id., at 728, and when the

trial "court [as here] has failed to determine net income or the child's needs, this [appellate] court has remanded for further proceedings," id., at 729.

Your Petitioner requested such a remand in the New Hampshire Supreme Court and was summarily rebuffed without any consideration whatsoever.

Fixed-percentage-of-gross-income Child Support Guidelines are almost certain to be unfair, irrational, and arbitrary, and hence should be discouraged from proliferating among the States by this Court. Bandini Co. v. Superior Court, 284 U.S. 8, 18-19 (1931)(there must be "some rational connection between the fact proved [gross income] and the ultimate fact presumed [child support level]. The legislative presumption is invalid when it is entirely arbitrary, or creates an

invidious discrimination, or operates to deprive a party of a reasonable opportunity to present pertinent facts in his defense").

The instant Child Support Guidelines exclude from consideration the actual needs of the child, his historical, accustomed level of support, and the legitimate expenses of generating the very income sought to be levied against. It follows inescapably that they are arbitrary, capricious, and irrational as a result, and "invalid" under applicable cases of this Court and of the Courts of Appeals.

The large number of Amici Curiae in Fitzgerald submitted a vast body of authorities on this topic, and consideration by this Court would likely generate a solid basis for determination of this matter, likely to recur in cases among the several States in years to come.

These are special and important reasons for this Court to allow the writ in this case.

III. PETITIONER WAS DENIED FOURTEENTH AMENDMENT DUE PROCESS OF LAW BY HAVING THE MERITS OF HIS DIVORCE DETERMINED BY A MERE ATTORNEY—NOT A JUDICIAL OFFICER AS DEFINED BY STATE LAW—WHERE NO JUDICIAL OFFICER EVER HEARD OR REVIEWED DISPUTED ISSUES DE NOVO OR REVIEWED ANY RECORD OF THE TRIAL PROCEEDINGS.

Another patent defect in the State proceedings, of constitutional dimension, was the failure and refusal of the State to afford Your Petitioner any hearing by a judicial officer prior to or after the determination of the merits of his divorce case.

A "judicial officer" in New Hampshire is nominated and appointed by the Governor and Executive Council pursuant to Part II, Articles 46 & 47 of the New Hampshire Constitution. Opinion of the Justices, 128 N.H. 17, 19, 509 A.2d 746 (1986). The private attorney who sat as a "master" in this case was "not so appointed, tenured or empowered" as a "judicial officer" as

a matter of law. Id., at 20. He lacked the "necessary characteristic of a judicial officer [, namely] the authority to render judgment to determine issues that are properly raised before the judicial branch," id., at 19, citing Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 718 (1838) and N. H. Constitution, Part I, Art. 37 and Part II, Art. 72-a. Accordingly, this master had no jurisdiction, "that final authority," Opinion of the Justices, supra, 128 N.H., at 19, to determine issues in Petitioner's divorce case. Ibid, citing R. Wiebusch, 5 NEW HAMPSHIRE PRACTICE: CIVIL PRACTICE AND PROCEDURE, Ch. 39 (Equity, 1984). See especially, id., 5 Wiebusch, § 1380, n. 85 (Supp. 1989)("The [N.H.] Supreme Court has recently acknowledged that the Superior Court judge usually gives a Master's Report only cursory review before approving and signing it. State ex rel. Casinelli v. Bourgeois, 127 N.H.

754, 506 A.2d 351 (1986)").

This "cursory review" in Your Petitioner's case included summary denials by the trial court of requests for de novo rehearing of disputed issues by a duly commissioned Superior Court Justice and denial of Petitioner's motions for production of the transcripts of proceedings before the Master, for at least appellate-type review by a Justice as a bare minimum. Thus, there was no review or hearing whatever by any judicial officer as respecting any disputed matter in this case.

The lack of hearing by any judicial officer, and the consequent sole and unreviewed determination of all issues by one not qualified to decide them—i.e., the attorney-master lacking jurisdiction or authority to determine issues—worked a total deprivation of Fourteenth Amendment due process of law, to Petitioner's

disadvantage and prejudice.

The United States Court of Appeals for the First Circuit reviewed a similar challenge to the "master system" arising in a New Hampshire divorce case, see, Witte v. Justices of the New Hampshire Superior Court, 831 F.2d 362 (1st Cir. 1987), and concluded that where the State litigant had had the opportunity for de novo rehearing or some other review of the proceedings before the Master by a true judicial officer, the State system passed constitutional muster as a matter of due process of law, because it provided essentially the same judicial determination or at least de novo review afforded criminal defendants in Federal Courts under the Federal Magistrate Act upheld in United States v. Raddatz, 447 U.S. 667, 677-681 (1980). See, Witte v. Justices, supra, 831 F.2d, at 364. Dr. Witte had

not shown that his trial counsel had ever requested hearing or rehearing de novo by a regular Justice of the New Hampshire Superior Court, or ever requested production of the transcripts of proceedings before the Master for appellate-type review by a Justice. Your Petitioner, by contrast, repeatedly requested implementation of such procedures in timely written motions before and after each hearing by the "master," and by oral requests during the trials and hearings in this case.

This Court pointed out in Raddatz, 447 U.S., at 677, by its citation to Morgan v. United States, 298 U.S. 468, 481 (1936) ("[t]he one who decides must hear" the case or address himself to the evidence in some fashion) that a master or magistrate system can survive constitutional challenge only if a litigant is heard in some form by a judicial officer on "those portions

of the magistrate's report to which objection is made," as stated in Witte v. Justices, supra, 831 F.2d, at 364, citing Raddatz, supra. At the barest minimum, the State litigant must be allowed to "hav[e] proceedings before a master transcribed and... present[ed] to a trial judge [as] an adequate record from which to obtain judicial review of the master's findings." Witte, 831 F.2d, at 363 n. 2.

Here, Petitioner was afforded neither hearing by a justice, rehearing de novo of disputed issues, or even appellate-type review of the record of proceedings at trial. Cf., Bundy v. Wilson, 815 F.2d 125, 129 & n. 3, 133 (1st Cir. 1987) (meaningful appellate review of trial proceedings is impossible without review of transcripts or some other adequate record of the trial as a matter of due process of law).

Thus, in contrast to the type of

review or rehearing de novo afforded Federal litigants before a District Judge on objected-to portions of a Magistrate's report and recommendation, in New Hampshire the Superior Court justices routinely give the master's report "only cursory review," and nothing else. This is not due process of law, as it was clarified by this Court in Morgan v. United States, supra, 298 U.S., at 477-481. See especially, id., at 480-481 ("a judicial proceeding"..."is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence....If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given" that is a "fundamental procedural requirement" of our Constitution).

In New Hampshire, it is a matter of State law that only the Superior Court Justice determines divorce cases. Opinion of the Justices, supra, 128 N.H., at 19-21; Witte v. Justices, supra, 831 F.2d, at 363. Yet it is now ingrained practice in New Hampshire that judges do not afford any review of evidence or argument in divorce cases at all, but "only cursory review" of "a Master's Report" after it is written, "before approving and signing it." No further review, even appellate review, is practically available in New Hampshire. R. Wiebusch, 5 NEW HAMPSHIRE PRACTICE: CIVIL PRACTICE AND PROCEDURE, Ch. 39 (Trial by Masters). Cf., Section I of this Petition, ante, 12-19 (summary dispositions of appeals in New Hampshire Supreme Court without review of any trial record).

Since it is undisputed that no judicial officer heard or reviewed evidence on disputed issues in this case, and the master who heard and decided the case had no authority to do so as a clear matter of State law, a palpable violation of the jurisdiction and hearing requirement of the Due Process Clause of the Fourteenth Amendment to the United States Constitution appears in this case.

This fundamental constitutional defect, infecting an entire State court system as a direct response to the nationwide increase in litigation volume experienced by all American courts, is a special and important reason for this Court to grant this Petition and set some guidelines for the States in these respects. Citizens deserve more than "routinely rubber stamped" justice from their State Courts. Witte v. Justices,

supra, 831 F.2d, at 363 n. 2. This practice should be stopped now by this Court, before it spreads elsewhere.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari to the Supreme Court of New Hampshire should be granted.

Because the constitutionality of two State laws is challenged herein, Petitioner has notified John P. Arnold, Esq., Attorney General of the State of New Hampshire, of the applicability of 28 U.S.C. § 2403(b) and served him with copies of this Petition.

Respectfully submitted,

June 25 , 1990

Carl P. Scheidegg

Carl P. Scheidegg, Pro Se
48 Heather Court
Nashua, N.H. 03062

(603) 886-0080

cc: Honey Charlotte Hastings, Esq.,
Counsel for Respondent